

1 JOHN S. BATTENFELD, State Bar No. 119513  
2 ALBERT HUANG, State Bar No. 193005  
3 MORGAN, LEWIS & BOCKIUS LLP  
300 South Grand Avenue  
Twenty-Second Floor  
Los Angeles, CA 90071-3132  
4 Tel: 213.612.2500  
Fax: 213.612.2501  
5 E-mail: jbattenfeld@morganlewis.com  
ahuang@morganlewis.com

6 ERIC MECKLEY, State Bar No. 168181  
7 STEVEN J. GARRETT, State Bar No. 221021  
8 MORGAN, LEWIS & BOCKIUS LLP  
One Market, Spear Street Tower  
San Francisco, CA 94105-1126  
9 Tel: 415.442.1000  
Fax: 415.442.1001  
10 E-mail: emeckley@morganlewis.com  
steven.garrett@morganlewis.com

11 Attorneys for Defendant  
12 CHARMING SHOPPES OF DELAWARE, INC.

13  
14 UNITED STATES DISTRICT COURT  
15 NORTHERN DISTRICT OF CALIFORNIA  
16

17 SHAMEIKA MOODY, as an individual  
and on behalf of others similarly situated,

18 Plaintiff,

19 vs.

20 CHARMING SHOPPES OF  
21 DELAWARE, INC., a corporation, and  
DOES 1 through 20, inclusive,

22 Defendant.  
23

Case No. C 07-6073 BZ

**CERTIFICATE OF FILING AND  
SERVICE OF NOTICE TO PLAINTIFF  
AND TO THE SUPERIOR COURT OF  
REMOVAL OF ACTION TO FEDERAL  
DISTRICT COURT**

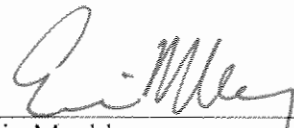
Date of Filing: November 30, 2007

24 PLEASE TAKE NOTICE THAT on December 3, 2007, Defendant Charming Shoppes,  
25 Inc. ("Defendant") filed with the Superior Court and served on counsel for Plaintiff a Notice to  
26 Plaintiff and to the Superior Court of Removal of Action to the United States District Court  
27 Northern District of California.

1 A true and correct copy of the file endorsed Notice to the Plaintiff and to the Superior  
2 Court of Removal of Action (without the attached exhibits), along with the Proof of Service for  
3 same, is attached to this Certification as **Exhibit A**.

4 Dated: December 7, 2007

MORGAN, LEWIS & BOCKIUS LLP

5  
6 By   
7 Eric Meckley  
8 Attorneys for Defendant  
9 CHARMING SHOPPES OF  
10 DELAWARE, INC.  
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# EXHIBIT A

JOHN S. BATTENFELD, State Bar No. 119513  
ALBERT HUANG, State Bar No. 193005  
MORGAN, LEWIS & BOCKIUS LLP  
300 South Grand Avenue  
Twenty-Second Floor  
Los Angeles, CA 90071-3132  
Tel: 213.612.2500  
Fax: 213.612.2501  
E-mail: [jbattenfeld@morganlewis.com](mailto:jbattenfeld@morganlewis.com)  
[ahuang@morganlewis.com](mailto:ahuang@morganlewis.com)

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MORGAN, LEWIS & BOCKIUS LLP  
One Market, Spear Street Tower  
San Francisco, CA 94105-1126  
Tel: 415.442.1000  
Fax: 415.442.1001  
E-mail: [emeckley@morganlewis.com](mailto:emeckley@morganlewis.com)  
[steven.garrett@morganlewis.com](mailto:steven.garrett@morganlewis.com)

Attorneys for Defendant  
CHARMING SHOPPES OF DELAWARE, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO

SHAMEIKA MOODY, as an individual  
and on behalf of others similarly situated,

Plaintiff,

vs.

CHARMING SHOPPES OF  
DELAWARE, INC., a corporation, and  
DOES 1 through 20, inclusive,

Defendants.

Case No. RG 07-468057

**NOTICE TO PLAINTIFF AND TO THE  
SUPERIOR COURT OF REMOVAL OF  
ACTION TO FEDERAL DISTRICT  
COURT**

Complaint Filed: October 11, 2007

TO THE CLERK OF THE ABOVE-CAPTIONED COURT AND PLAINTIFF AND HER  
COUNSEL OF RECORD:

PLEASE TAKE NOTICE THAT on November 30, 2007, Defendant Charming Shoppes  
of Delaware, Inc. ("Defendant") filed a Notice of Removal of the above-captioned action to the  
United States District Court for the Northern District of California.

LSF/70304971

NOTICE TO PLAINTIFF AND TO THE  
SUPERIOR COURT OF REMOVAL

ENDORSED  
FILED  
San Francisco County Superior Court  
DEC 03 2007  
GORDON PARK-LI, Clerk  
BY: WESLEY RAMIREZ  
Deputy Clerk

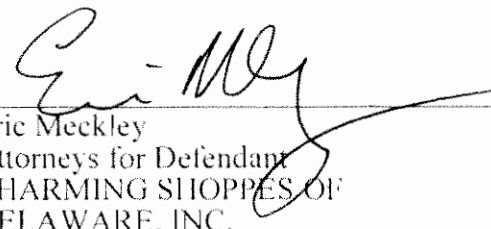
1 A true and correct copy of the file-endorsed Notice of Removal of Action, along with all  
2 exhibits and attachments, is attached to this notice as **Exhibit A** and is filed and served herewith.

3 PLEASE TAKE FURTHER NOTICE that, pursuant to 28 U.S.C. Section 1446, the filing  
4 of the Notice of Removal of Action in the United States District Court for the Northern District of  
5 California, together with the filing of a copy of the Notice herein, effects the removal of this  
6 action, and the above-entitled Court lacks jurisdiction to proceed further with this case unless this  
7 case is remanded.

8 Dated: December 3, 2007

MORGAN, LEWIS & BOCKIUS LLP

9  
10  
11 By

  
Eric Meckley  
Attorneys for Defendant  
CHARMING SHOPPES OF  
DELAWARE, INC.

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10 ahuang@morganlewis.com

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20 Attorneys for Defendant  
21 CHARMING SHOPPES OF DELAWARE, INC.

22 UNITED STATES DISTRICT COURT  
23 NORTHERN DISTRICT OF CALIFORNIA

**BZ**

24 SHAMEIKA MOODY, as an individual  
25 and on behalf of others similarly situated,

26 Plaintiff,

27 vs.

28 CHARMING SHOPPES OF  
DELAWARE, INC., a corporation, and  
DOES 1 through 20, inclusive,

Defendant.

Case No.

**DEFENDANT CHARMING SHOPPES OF  
DELAWARE, INC.'S NOTICE OF  
REMOVAL OF ACTION TO THE UNITED  
STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF CALIFORNIA**

**28 U.S.C. §1332(d)  
28 U.S.C. §1441(a)**

TO THE CLERK OF THE ABOVE-ENTITLED COURT:

PLEASE TAKE NOTICE that Defendant Charming Shoppes of Delaware, Inc.  
("Defendant") removes to this Court the State Court action described below based upon the  
Court's removal jurisdiction under 28 U.S.C. Section 1441(a), which in turn is based upon the  
Court's original diversity of citizenship jurisdiction under 28 U.S.C. Section 1332(d), and



1 pursuant to 28 U.S.C. Sections 1446(a) and 1453(b), and hereby states that this Court has  
 2 jurisdiction over the action pursuant to the Class Action Fairness Act of 2005 (the "CAFA").

3 As and for its Notice of Removal, Defendant represents and pleads as follows:

4 1. This lawsuit is a civil action within the meaning of the Acts of Congress relating to  
 5 removal of causes. *See* 28 U.S.C. § 1453.

6 2. On or about October 11, 2007, Plaintiff Shameika Moody ("Plaintiff") filed this  
 7 civil action in the Superior Court of the State of California for the County of San Francisco with  
 8 the assigned State Court case number being RG07-468057.

9 3. This action was therefore commenced after the effective date of the Class Action  
 10 Fairness Act of 2005, Pub. L. No. 109-2 (enacted Feb. 18, 2005) ("CAFA"), *codified at* 28 U.S.C.  
 11 §§ 1332(d), 1453, and 1711-1715.

12 4. Defendant was served with the Summons and Complaint upon Defendant on  
 13 November 1, 2007. True and correct copies of the Summons and Complaint are attached hereto  
 14 as **Exhibit 1**, and are incorporated by reference herein.

15 5. Because this Notice of Removal is filed within thirty days of service upon  
 16 Defendant of the Summons and Complaint, it is timely under 28 U.S.C. §§ 1446(b) and 1453.

17 6. This lawsuit was brought by a putative representative on behalf of a purported  
 18 class of individuals. Complaint, 2:5-11, ¶¶ 1, 2, 6, 8, 17. As such, this matter is a "class action"  
 19 as that term is defined pursuant to 28 U.S.C. §§ 1332(d) (1) (B) and 1453.<sup>1</sup>

20 7. This action could have been originally filed in this Court pursuant  
 21 28 U.S.C. § 1332(d) because this matter was brought as a class action, complete diversity of  
 22 citizenship exists between one or more members of the class and Defendant, and the amount in  
 23 controversy exceeds, in the aggregate, \$5,000,000, exclusive of interest and costs. Removal is  
 24 therefore proper pursuant to 28 U.S.C. §§ 1441(a), 1446 and 1453.

25  
 26 <sup>1</sup> Defendant does not concede, and reserves the right to contest at the appropriate time, Plaintiff's  
 27 allegations that this action can properly proceed as a class action. Defendant further does not  
 28 concede that any of Plaintiff's allegations constitute a cause of action under applicable  
 California law.

**I. DIVERSITY OF CITIZENSHIP EXISTS**

8. Plaintiff is, and was at the institution of this civil action, and at all times intervening, a citizen and resident of California. Complaint, ¶ 8.

9. Plaintiff seeks to represent a class of “non-exempt employees” who work or have worked for Defendant from October 11, 2003 through the present, within the State of California. Complaint, p. 2:5-11, ¶¶ 1, 2, 17.

10. Defendant is, and was at the time of the institution of this civil action, and at all times intervening, a corporation incorporated under the laws of the State of Pennsylvania with its principal place of business (where its executive and administrative functions are performed) in the State of Pennsylvania, and therefore is a citizen of the State of Pennsylvania for the purposes of determining diversity. 28 U.S.C. §1332(c)(1). Defendant does not manufacture, purchase or sell goods in California, or advertise goods or services in California. Defendant does not have any California employees, and does not own or lease any property in California. Defendant does not own or operate any stores in California. The inclusion of “Doe” defendants in Plaintiff’s Complaint has no effect on the ability to remove, pursuant to 28 U.S.C. §§ 1441(a).

11. As a result, Defendant is not now, and was not at the time of the filing of the complaint, a citizen and/or resident of the State of California within the meaning of the Acts of Congress relating to the removal of causes.

12. Based on the Complaint, members of the purported class are citizens of a State different from that of Defendant. Complete diversity exists between the parties.

**II. THE AMOUNT-IN-CONTROVERSY REQUIREMENT IS SATISFIED**

13. Pursuant to the CAFA, the claims of the individual members in a class action are aggregated to determine if the amount in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs. *See* 28 U.S.C. § 1332(d) (6).

14. Congress intended for federal jurisdiction to be appropriate under the CAFA “if the value of the matter in litigation exceeds \$5,000,000 either from the viewpoint of the plaintiff or the viewpoint of the defendant, and regardless of the type of relief sought (e.g., damages, injunctive relief, or declaratory relief).” Senate Judiciary Report, S. REP. 109-14, at 42.



15. The Complaint in this action purports to allege on behalf of each of the putative class members the following claims: (1) failure to pay overtime wages in violation of Labor Code Section 1194 and the California IWC Wage Orders on behalf of herself and each of the putative class members (*See* Complaint ¶¶ 30-38); (2) failure to timely pay wages due at termination in violation of Labor Code Sections 201 and 202 and recovery of penalties under Labor Code Section 203 on behalf of herself and each of the putative class members (*See* Complaint ¶¶ 39-43); (3) failure to provide meal periods in violation of California Labor Code Sections 226.7 and Section 11 of the California Industrial Welfare Commission (“IWC”) Wage Order No. 7 on behalf of herself and each of the putative class members (*See* Complaint, ¶¶ 44-50); (4) failure to comply with itemized employee wage statement provisions in violation of Labor Code Section 226 (*See* Complaint ¶¶ 51-54); and (5) violation of Business and Professions Code Section 17200, *et seq.* on behalf of herself and each of the putative class members, based upon the above alleged violations (*See* Complaint ¶¶ 55-60).

16. Labor Code Section 226.7(b) provides that “[i]f an employer fails to provide an employee a meal or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each work day that the meal or rest period was not provided.”

17. Plaintiff worked for Lane Bryant, Inc. (hereinafter “Lane Bryant”) as an Assistant Store Manager from approximately October 31, 2006 through approximately July 7, 2007 (for a period comprising approximately 35 work weeks). During her typical work week, Plaintiff worked 5 days. Plaintiff’s final hourly rate of pay was \$23.07.

18. The Complaint seeks relief for claims on behalf of a putative class of “non-exempt employees” who work or have worked for Defendant from October 11, 2003 through the present, within the State of California. Complaint, 2:5-11, ¶¶ 1, 2, 17. Based on this alleged class definition, Lane Bryant employed approximately 7,635 non-exempt employees in California during the period from October 11, 2003 through the present. The total number of managerial level non-exempt employees, such as Plaintiff, working in California during that period was approximately 158 employees. The average number of active managerial level non-exempt

1 employees who were employed in California during the 4-year putative class period was  
2 approximately 52. The average hourly rate of pay for these managerial level California non-  
3 exempt employees (as of October 2005) was approximately \$16.58. The total number of non-  
4 managerial non-exempt employees working in California during the 4-year putative class period  
5 was approximately 7,477 employees. The average number of active non-managerial level  
6 California non-exempt employees who were employed in California during the 4 year period was  
7 approximately 1,037. The average hourly rate of pay for non-managerial non-exempt employees  
8 (as of October 2005) was approximately \$8.41.

9       19. Plaintiff alleges that her claims are typical of the claims of all of the putative class  
10 members. Plaintiff does not allege how many meal breaks she or others were not permitted.  
11 Assuming Plaintiff alleged that all managerial level non-exempt employees were not provided a  
12 meal period on one day out of their typical work week and were entitled to one additional hour of  
13 pay for each work day on which a meal period was not provided, the total amount at issue for  
14 their meal period claims would be approximately \$179,329 or [52 average number of employees  
15 x \$16.58 x 52 weeks x 4 years].

16       20. Assuming Plaintiff alleged that all non-managerial non-exempt employees were  
17 not provided with a meal period on average one day out of their typical work week and were  
18 entitled to one additional hour of pay for each work day on which a meal period was not  
19 provided, the total amount at issue for their meal period claims would be approximately  
20 \$1,814,003 or [1037 average number of employees x \$8.41 x 52 weeks x 4 years]. Therefore, the  
21 total amount at issue for meal period claims for a class consisting of approximately 52 managerial  
22 level non-exempt employees per year and 1,037 non-managerial non-exempt employees per year  
23 could be a total of \$1,993,332. Assuming Plaintiff claimed that all non-exempt employees were  
24 not provided a meal period on average two days per week, then the total amount at issue for the  
25 meal period claims at issue could be \$3,986,664.

26       21. Labor Code Section 203 provides that "[i]f any employer willfully fails to  
27 pay...any wages of an employee who is discharged or who quits, the wages of the employee shall  
28 continue as a penalty from the due date thereof at the same rate until paid ...but the wages shall

1 not continue for more than 30 days." If Plaintiff worked approximately 8 hours per day on  
 2 average, and if Plaintiff proved that she was willfully not paid all wages owing within 30 days of  
 3 the date on which final wages were owed, Plaintiff's alleged waiting time penalties would be  
 4 \$5,536.80 or  $[(\$23.07 \times 8 \text{ hours per day}) \times 30 \text{ days}]$ . Plaintiff alleges her claims are typical of all  
 5 of the putative class of non-exempt employees. Complaint ¶ 28. The total number of managerial  
 6 level non-exempt employees terminated in California from October 11, 2003 through the present  
 7 was approximately 95 employees. Assuming these managerial level non-exempt employees  
 8 worked 8 hours per day on average, and assuming they proved they were willfully not paid all  
 9 wages owing within 30 days of the date on which final wages were owed, their alleged waiting  
 10 time penalties would be \$378,024 or  $[(\$16.58 \times 8 \text{ hours per day}) \times 30 \text{ days} \times 95 \text{ terminated}$   
 11  $\text{managerial level non-exempt employees}]$ .

12 22. The total number of non-managerial level non-exempt employees terminated in  
 13 California from October 11, 2003 through the present was approximately 6,208 employees.  
 14 Some of these employees worked part-time. Assuming the non-managerial non-exempt  
 15 employees worked 5 hours per day on average, and assuming they prove they were willfully not  
 16 paid all wages owing within 30 days of the date on which final wages were owed, their alleged  
 17 waiting time penalties would be \$7,831,392 or  $[(\$8.41 \times 5 \text{ hours per day}) \times 30 \text{ days} \times 6,208 \text{ non-}$   
 18  $\text{managerial non-exempt terminated employees}]$ .

19 23. Labor Code Section 226(e) provides that "an employee suffering injury as a result  
 20 of a knowing and intentional failure by an employer to comply with Section 226(a) is entitled to  
 21 recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a  
 22 violation occurs and one hundred dollars (\$100) per employee for each subsequent violation in a  
 23 subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000).  
 24 Plaintiff alleges that she and the putative class members are entitled to penalties pursuant to Labor  
 25 Code Section 226. Complaint ¶ 53. Plaintiff worked for approximately 18 pay periods during her  
 26 employment. If she could prove her claim under Labor Code Section 226, she could recover  
 27 \$1,750 in penalties. Assuming only 2000 putative class members could potentially recover  
 28 \$2,000 in penalties under Section 226(e) (i.e., one-half the maximum amount recoverable), the



1 total amount of Section 226(e) penalties could amount to \$4,000,000.

2 24. The Complaint seeks attorneys' fees. See Complaint, Prayer for Relief, ¶ 9.  
 3 Attorneys' fees are properly included in determining the amount in controversy. *Galt G/S v. JSS*  
 4 *Scandinavia*, 142 F. 3d 1150, 1156 (9th Cir 1998). Assuming Plaintiff can recover on her claims,  
 5 she would most likely assert entitlement to attorneys' fees of approximately 25% of the total  
 6 recovery. Cf. *In re Quintus Securities Litigation*, 148 F.Supp.2d 967, 973 (N.D.Cal. 2001)  
 7 (noting in the class action settlement context, that the benchmark for setting attorneys' fees is 25  
 8 percent of the common fund).

9 25. Therefore, although Defendant denies Plaintiff's allegations and denies that she or  
 10 the putative class that she purports to represent is entitled to any of the relief for which she has  
 11 prayed, based on Plaintiff's allegations and prayer for relief, the amount in controversy associated  
 12 with the aggregated claims asserted, if proven, will exceed the sum or value of \$5,000,000,  
 13 exclusive of interest or costs, and therefore the threshold stated in 28 U.S.C. Section 1332(d)(2)  
 14 has been satisfied.

### 15 **III. THE OTHER PREREQUISITES FOR REMOVAL HAVE BEEN SATISFIED**

16 26. As set forth above, this Notice of Removal is filed within thirty days of service of  
 17 the Summons and Complaint upon Defendant.

18 27. This district embraces the county in which the removed action has been pending.

19 28. The Summons and Complaint attached as **Exhibit 1** constitute all the process,  
 20 pleadings and orders in this case.

21 29. Defendant promptly will serve Plaintiff with this Notice of Removal and will file a  
 22 copy of this Notice of Removal with the clerk of the state court in which the action is pending, as  
 23 required under 28 U.S.C. § 1446(d).

24 30. Defendant has sought no similar relief.


25 31. The prerequisites for removal under 28 U.S.C. §§ 1441 and 1453 have been met.

26 32. If any question arises as to the propriety of the removal of this action, Defendant  
 27 requests the opportunity to present both a brief and oral argument in support of its position that  
 28 this case is removable.

1 WHEREFORE, Defendant, desiring to remove this case to the United States District  
2 Court for the Northern District of California, being the district of said Court for the County in  
3 which the action is now pending, respectfully requests that the filing of this Notice of Removal  
4 shall effect the removal of the suit to this Court.

5 Dated: November 30, 2007

MORGAN, LEWIS & BOCKIUS LLP

6  
7  
8 By   
Eric Meckley  
9 Attorneys for Defendant  
10 CHARMING SHOPPES OF  
11 DELAWARE, INC.  
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SOLUTIONS  
(CITACION JUDICIAL)

ORIGINAL

P.02

SUM-100

## NOTICE TO DEFENDANT:

(AVISO AL DEMANDADO):

CHARMING SHOPPES OF DELAWARE, INC., a corporation,  
and DOES 1 through 20, inclusive

## YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

SHAMEIKA MOODY, as an individual and on behalf of  
others similarly situatedFOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to ask an attorney right away. If you do not know an attorney, you may want to ask an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association.

Tiene 30 días de calendario después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito debe que usar un formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.courtinfo.ca.gov/selfhelp/espanol](http://www.courtinfo.ca.gov/selfhelp/espanol)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California ([www.courtinfo.ca.gov/selfhelp/espanol](http://www.courtinfo.ca.gov/selfhelp/espanol)) o póngase en contacto con la corte o el colegio de abogados.

The name and address of the court is:

(El nombre y dirección de la corte es:

Superior Court of California  
County of San Francisco  
400 McAllister Street  
San Francisco, CA 94102-4514  
Civic Center Courthouse

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es:

Larry W. Lee (38N 228175) (213) 488-6555 (213) 488-6554  
Diversity Law Group  
444 S. Flower Street, Suite 1370  
Los Angeles, CA 90071

DATE: OCT 11 2007

(Fecha)

GORDON PARK-LA

Clerk, by  
(Secretario)Deputy  
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

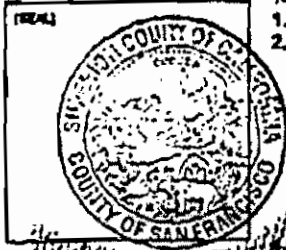
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

## NOTICE TO THE PERSON SERVED: You are served

- ☐ as an individual defendant.
- ☐ as the person sued under the fictitious name of (specify):

☐ on behalf of (specify):

- under: ☐ CCP 415.10 (corporation) ☐ CCP 415.60 (minor)  
☐ CCP 415.20 (defunct corporation) ☐ CCP 415.70 (conservatee)  
☐ CCP 415.40 (association or partnership) ☐ CCP 415.90 (authorized person)  
☐ other (specify):

☐ by personal delivery on (date):

Form Approved for Mandatory Use  
Judicial Council of California  
SUM-100 (Rev. January 1, 2004)

SUMMONS

Legal  
Solutions  
of PAULPage 1 of 1  
Code of Civil Procedure §§ 415.20, 488



OCT-11-2007 11:48

P.03

CM-010

**ORIGINAL**

ATTORNEY OR PARTY WITHOUT ATTORNEY  
**Larry W. Lee (SBN 221173)**  
 Diversity Law Group  
 444 S. Flower Street, Suite 1370, Los Angeles, CA 90071

TELEPHONE NO: (213) 488-6555 FAX NO: (213) 488-6554  
 ATTORNEY FOR PARTY: **Plaintiff Sharmelka Moody**

SUPERIOR COURT OF CALIFORNIA, COUNTY OF **San Francisco**  
 STREET ADDRESS: **400 McAllister Street**  
 MAILING ADDRESS:  
 CITY AND ZIP CODE: **San Francisco, CA 94102**  
 BUILDING: **Civic Center Courthouse**

CASE NAME:  
**Moody v. Charming Shoppes of Delaware, Inc.**

**CIVIL CASE COVER SHEET**

☒ Unfiled (Amount demanded exceeds \$25,000) ☐ Limited (Amount demanded is \$25,000 or less)

Complex Case Designation  
☐ Coariser ☐ Joinder  
 Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

FILED  
 San Francisco County Superior Court  
 OCT 11 2007  
 GORDON PARK-LI, Clerk  
 BY *[Signature]*  
 CALL NUMBER: **907-468057**  
 ADDRESS:  
 DEPT:

Items 1-8 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

<input type="checkbox"/> Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <input type="checkbox"/> Other PUPD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (48) <input type="checkbox"/> Other PUPD/WD (23) <input type="checkbox"/> Non-PUPD/WD (Other) Tort <input type="checkbox"/> Business torts/fair business practice (37) <input type="checkbox"/> Civil rights (09) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (26) <input type="checkbox"/> Other non-PUPD/WD tort (35) <input type="checkbox"/> Employment <input type="checkbox"/> Wrongful termination (38) <input checked="" type="checkbox"/> Other employment (18)	<input type="checkbox"/> Contract <input type="checkbox"/> Breach of contract/warranty (05) <input type="checkbox"/> Rule 3.748 collections (08) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (27) <input type="checkbox"/> Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (20) <input type="checkbox"/> Other real property (28) <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (36) <input type="checkbox"/> Judicial Review <input type="checkbox"/> Asset forfeiture (09) <input type="checkbox"/> Petition for arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<input type="checkbox"/> Previously Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (22) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (25) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed previously complex case types (41) <input type="checkbox"/> Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (23) <input type="checkbox"/> Miscellaneous Civil Complaints <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <input type="checkbox"/> Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. <input type="checkbox"/> Large number of separately represented parties	d. <input type="checkbox"/> Large number of witnesses
b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve	e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
c. <input type="checkbox"/> Substantial amount of documentary evidence	f. <input type="checkbox"/> Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary, declaratory or injunctive relief c. ☐ punitive

4. Number of causes of action (specify):

5. This case ☒ is ☐ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: **October 11, 2007**  
 Larry W. Lee

(Type or Print Name)

(Signature of Party or Attorney for Party)

File by Fax

**NOTICE**

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Form Approved for Mandatory Use  
 Judicial Council of California  
 Courts (Form JWS 1-2007)

**CIVIL CASE COVER SHEET**

Cal. Rules of Court, rules 3.30, 3.776, 3.400-3.403, 3.740  
 Cal. Standards of Judicial Administration, rule 5.10

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PETER M. HART (California Bar No. 198691)  
 LAW OFFICES OF PETER M. HART  
 13952 Bora Bora Way, F-320  
 Marina Del Rey, CA 90292  
 Telephone: (310) 478-5789  
 Facsimile: (509) 561-6441

KENNETH H. YOON (California Bar No. 198443)  
 LAW OFFICES OF KENNETH H. YOON  
 One Wilshire Blvd., Suite 2200  
 Los Angeles, California 90017-3383  
 Telephone: (213) 612-0988  
 Facsimile: (213) 947-1211

LARRY W. LEE (California Bar No. 228175)  
 DIVERSITY LAW GROUP, A Professional Corporation  
 444 S. Flower St., Suite 1370  
 The Citigroup Building  
 Los Angeles, CA 90071  
 Telephone: (213) 488-6555  
 Facsimile: (213) 488-6554

Attorneys for Plaintiff Shameika Moody

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 FOR THE COUNTY OF SAN FRANCISCO

SHAMEIKA MOODY, as an individual and  
 on behalf of others similarly situated,

Plaintiff,

vs.

CHARMING SHOPPES OF DELAWARE,  
 INC., a corporation, and DOES 1 through  
 20, inclusive,

Defendants.

Case No.:

07C07-468057

CLASS ACTION

COMPLAINT FOR DAMAGES AND  
 INJUNCTIVE RELIEF FOR:

- (1) FAILURE TO PAY OVERTIME WAGES;
- (2) VIOLATION OF LABOR CODE § 203;
- (3) VIOLATION OF LABOR CODE § 226.7;
- (4) VIOLATION OF LABOR CODE § 226;

**FILED**  
 San Francisco County Superior Court

OCT 11 2007

GORDON PARK-LI, Clerk  
 BY: [Signature]  
 Deputy Clerk

CASE MANAGEMENT CONFERENCE SET

MAR 14 2008 - 9 AM

DEPARTMENT 212

SUMMONS ISSUED

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(5) UNFAIR BUSINESS PRACTICES  
(Violation of California Business &  
Professions Code §17200 et seq.).

DEMAND FOR JURY TRIAL

Plaintiff Shameika Moody (hereinafter referred to as "Plaintiff"), hereby submit her class action complaint against Defendants CHARMING SHOPPES OF DELAWARE, INC. and DOES 1-20 (hereinafter collectively referred to as "DEFENDANTS") on behalf of herself and the class of all other similarly situated current and former employees of DEFENDANTS for overtime wages owed, meal period wages, waiting time penalties, and penalties or damages for failure to keep accurate records, restitution and injunctive relief as follows:

INTRODUCTION

1. This class action is within the Court's jurisdiction under California Labor Code §§ 201-204, 226, 226.7, 1194, and California Business and Professions Code § 17200, et seq., (Unfair Practices Act).

2. This complaint challenges systemic illegal employment practices resulting in violations of the California Labor Code and Business and Professions Code against employees of DEFENDANTS.

3. Plaintiff is informed and believes and based thereon alleges DEFENDANTS, joint and severally have acted intentionally and with deliberate indifference and conscious disregard to the rights of all employees in receiving all overtime wages due at the proper rate of overtime pay, all final wages due upon termination of employment, and in connection with DEFENDANTS' failure to keep all proper pay roll records of Plaintiff and Class Members.

4. Plaintiff is informed and believes and based thereon alleges DEFENDANTS have engaged in, among other things a system of willful violations of the California Labor Code, Business and Professions Code and applicable IWC wage orders by creating and maintaining policies, practices and customs that knowingly deny employees the above stated rights and benefits.

### JURISDICTION AND VENUE

7. Venue is proper because the DEFENDANTS do business in San Francisco County.



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1 State of California.

2 11. As such, and based upon all the facts and circumstances incident to  
3 DEFENDANTS' business in California, DEFENDANTS are subject to California Labor Code  
4 §§ 201-204, 226, 226.7, 1194 and California Business and Professions Code § 17200, et seq.,  
5 (Unfair Practices Act).

6 12. Plaintiff does not know the true names or capacities, whether individual, partner  
7 or corporate, of the DEFENDANTS sued herein as DOES 1 through 20, inclusive, and for that  
8 reason, said DEFENDANTS are sued under such fictitious names, and Plaintiff prays for leave to  
9 amend this complaint when the true names and capacities are known. Plaintiff is informed and  
10 believes and thereon alleges that each of said fictitious DEFENDANTS was responsible in some  
11 way for the matters alleged herein and proximately caused Plaintiff and members of the general  
12 public and class to be subject to the illegal employment practices, wrongs and injuries  
13 complained of herein.

14 13. At all times herein mentioned, each of said DEFENDANTS participated in the  
15 doing of the acts hereinafter alleged to have been done by the named DEFENDANTS; and  
16 furthermore, the DEFENDANTS, and each of them, were the agents, servants and employees of  
17 each of the other DEFENDANTS, as well as the agents of all DEFENDANTS, and at all times  
18 herein mentioned, were acting within the course and scope of said agency and employment.

19 14. Plaintiff is informed and believes and based thereon alleges that at all times  
20 material hereto, each of the DEFENDANTS named herein was the agent, employee, alter ego  
21 and/or joint venturer of, or working in concert with each of the other co-DEFENDANTS and was  
22 acting within the course and scope of such agency, employment, joint venture, or concerted  
23 activity. To the extent said acts, conduct, and omissions were perpetrated by certain  
24 DEFENDANTS, each of the remaining DEFENDANTS confirmed and ratified said acts,  
25 conduct, and omissions of the acting DEFENDANTS.

26 15. At all times herein mentioned, DEFENDANTS, and each of them, were members  
27 of, and engaged in, a joint venture, partnership and common enterprise, and acting within the  
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1 course and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

2 16. At all times herein mentioned, the acts and omissions of various DEFENDANTS,  
3 and each of them, concurred and contributed to the various acts and omissions of each and all of  
4 the other DEFENDANTS in proximately causing the injuries and damages as herein alleged. At  
5 all times herein mentioned, DEFENDANTS, and each of them, ratified each and every act or  
6 omission complained of herein. At all times herein mentioned, the DEFENDANTS, and each of  
7 them, aided and abetted the acts and omissions of each and all of the other DEFENDANTS in  
8 proximately causing the damages as herein alleged.

9 **CLASS ACTION ALLEGATIONS**

10 17. Definition: The named individual Plaintiff bring this action on behalf of herself  
11 and the class pursuant to California Code of Civil Procedure § 382. This action consists of the  
12 following Classes of employees (1) all of DEFENDANT'S past and present non-exempt  
13 employees employed in California during the period from October 11, 2003 to the present who  
14 were paid overtime wages and who were paid any form of incentive pay or were paid any form  
15 of non-discretionary bonuses, including sales bonuses and/or sales commissions, (2) all of  
16 DEFENDANT'S past and present non-exempt employees employed in California during the  
17 period from October 11, 2003 to the present who worked more than 5 hours in a shift.

18 18. Numerosity: The members of the class are so numerous that joinder of all  
19 members would be impractical, if not impossible. The identity of the members of the class is  
20 readily ascertainable by from DEFENDANTS' records, including payroll records and time  
21 records. Plaintiff is informed and believes and based thereon alleges that DEFENDANTS failed  
22 to (a) pay to Plaintiff and the class all overtime wages owed at the proper rate of overtime pay,  
23 (b) pay to Plaintiff and the class all final wages upon termination of employment, (c) provide  
24 proper meal periods in violation of Labor Code § 226.7, (d) keep proper payroll records in  
25 violation of Labor Code § 226 for Plaintiff and the class, and (e) engaged in Unfair Business  
26 Practices, all in violation of IWC Wage Order No 7-2001.

27 19. Adequacy of Representation: The named Plaintiff is fully prepared to take all  
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1 necessary steps to represent fairly and adequately the interests of the class defined above.  
2 Plaintiff's attorneys are ready, willing and able to fully and adequately represent the class and  
3 individual Plaintiff. Plaintiff's attorneys have prosecuted and settled wage-and-hour class  
4 actions in the past, have been appointed as class counsel by California courts, and currently have  
5 a number of wage-and-hour class actions pending in California state and federal courts.

6 20. DEFENDANTS uniformly administered a corporate policy, practice of failing to  
7 (a) pay to Plaintiff and the class all overtime wages owed at the proper rate of overtime pay by  
8 failing to include all non-discretionary bonuses, commissions, and other incentive pay into the  
9 calculation and payment of overtime wages, (b) provide or allow Plaintiff to take meal periods in  
10 compliance with California Labor Code 226.7 and applicable IWC Wage Orders (c) to Plaintiff  
11 and the class all final wages upon termination of employment, (d) keep proper payroll records in  
12 violation of Labor Code § 226 for Plaintiff and the class, and (e) engaged in Unfair Business  
13 Practices, all in violation of IWC Wage Orders.

14 21. Plaintiff is informed and believes and based thereon alleges that DEFENDANTS,  
15 in violation of California Labor Code §§ 201 to 204, and 1194, respectfully, had a consistent and  
16 uniform policy, practice of willfully failing to comply with Labor Code § 203. Plaintiff and  
17 other members of the class did not secret or absent themselves from DEFENDANTS, nor refuse  
18 to accept the earned and unpaid wages from DEFENDANTS. Accordingly, DEFENDANTS are  
19 liable for waiting time compensation for the unpaid wages to separated employees pursuant to  
20 California Labor Code § 203.

21 22. Common Question of Law and Fact: There are predominant common questions  
22 of law and fact and a community of interest amongst Plaintiff and the claims of the class  
23 concerning DEFENDANTS' failure to (a) pay to Plaintiff and the class all overtime wages owed  
24 at the proper rate of overtime pay by failing to include all paid non-discretionary bonuses,  
25 commissions, and other incentive pay into the calculation and payment of overtime wages, (b)  
26 pay to Plaintiff and the class all final wages upon termination of employment, (c) provide proper  
27 meal periods in violation of Labor Code § 226.7. (d) keep proper payroll records in violation of  
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1 Labor Code § 226, and (e) engaged in Unfair Business Practices, all in violation of IWC Wage  
2 Order No 7-2001.

3 23. Typicality: The claims of Plaintiff are typical of the claims of all members of the  
4 class in that Plaintiff has suffered the harms alleged in this Complaint in a similar and typical  
5 manner as the class members. Plaintiff is a member of the Classes and has suffered the alleged  
6 violations of California Labor Code §§ 201-204, 226, 226.7, 1194 and IWC Wage Order No. 7-  
7 2001 set forth in this Complaint.

8 24. The California Labor Code and upon which Plaintiff bases his claims are broadly  
9 remedial in nature. These laws and labor standards serve an important public interest in  
10 establishing minimum working conditions and standards in California. These laws and labor  
11 standards protect the average working employee from exploitation by employers who may seek  
12 to take advantage of superior economic and bargaining power in setting onerous terms and  
13 conditions of employment.

14 25. The nature of this action and the format of laws available to Plaintiff and  
15 members of the class identified herein make the class action format a particularly efficient and  
16 appropriate procedure to redress the wrongs alleged herein. If each employee were required to  
17 file an individual lawsuit, the corporate DEFENDANTS would necessarily gain an  
18 unconscionable advantage since it would be able to exploit and overwhelm the limited resources  
19 of each individual plaintiff with their vastly superior financial and legal resources. Requiring  
20 each class member to pursue an individual remedy would also discourage the assertion of  
21 lawful claims by employees who would be disinclined to file an action against their former  
22 and/or current employer for real and justifiable fear of retaliation and permanent damage to their  
23 careers at subsequent employment.

24 26. The prosecution of separate actions by the individual class members, even if  
25 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect  
26 to individual class members against the DEFENDANTS and which would establish potentially  
27 incompatible standards of conduct for the DEFENDANTS, and/or (b) adjudications with respect  
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1 to individual class members which would, as a practical matter, be dispositive of the interest of  
2 the other class members not parties to the adjudications or which would substantially impair or  
3 impede the ability of the class members to protect their interests. Further, the claims of the  
4 individual members of the class are not sufficiently large to warrant vigorous individual  
5 prosecution considering all of the concomitant costs and expenses.

6 27. Such a pattern, practice and uniform administration of corporate policy regarding  
7 illegal employee compensation described herein is unlawful and creates an entitlement to  
8 recovery by the Plaintiff and the class identified herein, in a civil action, for the unpaid balance  
9 of the full amount unpaid overtime, meal period premiums, including interest thereon, applicable  
10 penalties, reasonable attorney's fees, and costs of suit according to the mandate of California  
11 Labor Code §§ 226 and 1194 and Code of Civil Procedure § 1021.5.

12 28. Proof of a common business practice or factual pattern, which the named Plaintiff  
13 experienced and is representative of, will establish the right of each of the members of the  
14 Plaintiff class to recovery on the causes of action alleged herein.

15 29. The Plaintiff class is commonly entitled to a specific fund with respect to the  
16 compensation illegally and unfairly retained by DEFENDANTS. The Plaintiff class is  
17 commonly entitled to restitution of those funds being improperly withheld by DEFENDANTS.  
18 This action is brought for the benefit of the entire class and will result in the creation of a  
19 common fund.  
20

21 **FIRST CAUSE OF ACTION**

22 **FAILURE TO PAY OVERTIME WAGES**

23 **(AGAINST ALL DEFENDANTS BY PLAINTIFF)**

24 30. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 29 as  
25 though fully set for herein.

26 31. This cause of action is brought pursuant to Labor Code § 1194, et seq., which  
27 provides that employees are entitled to overtime wages and compensation for work performed,  
28 and provides a private right of action for failure to pay legal overtime compensation for overtime

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1 work performed.

2 32. At all times relevant herein, DEFENDANTS were required to compensate its non-  
3 exempt, hourly employees for all overtime hours worked at the appropriate rate of overtime pay  
4 pursuant to California Labor Code § 1194 and the applicable IWC Wage Orders.

5 33. As a pattern and practice, DEFENDANTS regularly required their non-exempt  
6 employees including Plaintiff and members of the class to work more than 8 hours per work day  
7 or more than 12 hours per day without the proper payment of all overtime wages earned at the  
8 proper rate of overtime wages. Plaintiff and class members were not compensated at the  
9 appropriate rate of overtime pay for all overtime hours they worked and were subject to the  
10 control of DEFENDANTS, including all overtime they were suffered or permitted to work.

11 34. As a pattern and practice, DEFENDANTS failed to include all paid non-  
12 discretionary bonuses, sales bonuses, and/or sales commissions and other incentive pay into the  
13 regular rate when calculating and paying Plaintiff and DEFENDANTS' other non-exempt  
14 California employees proper overtime compensation for daily and weekly overtime hours  
15 worked at the appropriate overtime rate.

16 35. Plaintiff is informed and believes and based thereon alleges that DEFENDANTS'  
17 policy and practice of requiring overtime work and not paying for said work according to the  
18 overtime mandates of California law is, and at all times herein mentioned was in violation of  
19 California Labor Code § 1194 and California Industrial Welfare Commission wage order(s).  
20 DEFENDANTS' employment policies and practices wrongfully and illegally failed to  
21 compensate Plaintiff and the class for overtime compensation earned as required by California  
22 law.

23 36. The conduct of DEFENDANTS and their agents and employees as described  
24 herein was willful and intentional and part of a corporate policy and procedure and practice.

25 37. Plaintiff is informed and believes and based thereon alleges that DEFENDANTS  
26 willfully failed to pay employees proper compensation for all overtime hours worked at the  
27 appropriate rate of overtime pay. Plaintiffs are informed and believe and based thereon allege  
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1 that DEFENDANTS' willful failure to provide all overtime wages due and owing them upon  
2 separation from employment results in a continued payment of wages up to thirty (30) days from  
3 the time the wages were due. Therefore, Plaintiff and other members of the class who have  
4 separated from employment are entitled to compensation pursuant to Labor Code § 203.

5 38. Such a pattern, practice and uniform administration of corporate policy regarding  
6 illegal employee compensation as described herein is unlawful and creates an entitlement to  
7 recovery by Plaintiff in a civil action, for the unpaid balance of the full amount of overtime  
8 premiums owing, including interest thereon, penalties, attorneys fees, and costs of suit according  
9 to the mandate of California Labor Code § 1194, et seq.

10 **SECOND CAUSE OF ACTION**

11 **VIOLATION OF LABOR CODE § 203**

12 **(AGAINST ALL DEFENDANTS BY PLAINTIFF)**

13 39. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 38 as  
14 though fully set for herein.

15 40. At all times relevant herein, DEFENDANTS were required to pay their non-  
16 exempt hourly employees all wages owed in a timely fashion at the end of employment pursuant  
17 to California Labor Code §§ 201 to 204.

18 41. As a pattern and practice, DEFENDANTS regularly failed to pay Plaintiff and  
19 class members their final wages, including all overtime wages and meal period wages, pursuant  
20 to Labor Code §§ 201 to 204 and accordingly owe waiting time penalties pursuant to Labor Code  
21 § 203.

22 42. The conduct of DEFENDANTS and their agents and employees as described  
23 herein was willfully done in violation of Plaintiff's and class members' rights, and done by  
24 managerial employees of DEFENDANTS.

25 43. Plaintiff is informed and believes and based thereon alleges DEFENDANTS'  
26 willful failure to provide all overtime wages and meal period wages due and owing them upon  
27 separation from employment results in a continued payment of wages up to thirty (30) days from  
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1 the time the wages were due. Therefore, Plaintiff and other members of the class who have  
2 separated from employment are entitled to compensation pursuant to Labor Code § 203.

3 **THIRD CAUSE OF ACTION**

4 **FOR VIOLATION OF LABOR CODE § 226.7 REGARDING MEAL PERIODS**  
5 **(AGAINST ALL DEFENDANTS BY PLAINTIFF)**

6 44. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 43 as  
7 though fully set for herein.

8 45. DEFENDANTS failed in their affirmative obligation to ensure that all of their  
9 employees, including Plaintiff, and other members of the class, had the opportunity to take and  
10 were provided with all proper meal periods in accordance with the mandates of the California  
11 Labor Code and the applicable IWC Wage Order. Plaintiff and the class were suffered and  
12 permitted to work through legally required meal breaks and were denied the opportunity to take  
13 their meal breaks. As such, DEFENDANTS are responsible for paying premium compensation  
14 for missed meal periods pursuant to Labor Code § 226.7 and IWC Wage Order No. 7 § 11(B)  
15 and have failed to pay this compensation. DEFENDANTS shall pay the each affected employee  
16 one (1) hour of pay at the employee's regular rate of compensation for each workday that the  
17 meal break was not provided and or denied.

18 46. Plaintiff and class members regularly worked in excess of five (5) hours per day  
19 and accordingly had a right to take a 30-minute meal period each day worked in excess of five  
20 (5) hours. Furthermore, Plaintiff and class members who worked in excess of ten (10) hours per  
21 day had a right to take a second 30-minute meal period each day worked in excess of ten (10)  
22 hours.

23 47. As a pattern and practice, DEFENDANTS regularly required employees to work  
24 through their meal periods without proper compensation and denied Plaintiff and their employees  
25 the right to take proper meal periods as required by law and DEFENDANTS failed to keep  
26 accurate records of meal breaks taken.

27 48. This policy of requiring employees to work through their legally mandated meal  
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1 periods and not allowing them to take proper meal periods is a violation of California law.

2 49. Plaintiff is informed and believes and based thereon alleges that DEFENDANTS  
3 willfully failed to pay employees who were not provided the opportunity to take meal breaks the  
4 premium compensation set out in Labor Code § 226.7 and IWC Wage Order No. 7 § 11(B) and  
5 that Plaintiff and those employees similarly situated as her are owed wages for the meal period  
6 violations set forth above. Plaintiff is informed and believes and based thereon alleges  
7 DEFENDANTS' willful failure to provide Plaintiff and other members of the class the wages  
8 due and owing them upon separation from employment results in a continued payment of wages  
9 up to thirty (30) days from the time the wages were due. Therefore, Plaintiff and other members  
10 of the class who have separated from employment are entitled to compensation pursuant to Labor  
11 Code § 203.

12 50. Such a pattern, practice and uniform administration of corporate policy as  
13 described herein is unlawful and creates an entitlement to recovery by the Plaintiff and the class  
14 identified herein, in a civil action, for the unpaid balance of the unpaid premium compensation  
15 pursuant to Labor Code § 226.7 and IWC Wage Order No. 7 § 11(B), including interest thereon,  
16 penalties, reasonable attorney's fees, and costs of suit.

17 **FOURTH CAUSE OF ACTION**

18 **FOR VIOLATION OF LABOR CODE § 226 REGARDING RECORD KEEPING**  
19 **(AGAINST ALL DEFENDANTS BY PLAINTIFF)**

20 51. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 50 as  
21 though fully set for herein.

22 52. DEFENDANTS failed in their affirmative obligation to keep accurate records  
23 regarding the rates of pay and the total amount of compensation of their California employees in  
24 pay periods. DEFENDANTS, as a matter of policy and practice, did not maintain accurate  
25 records in violation of Labor Code § 226 by failing as a matter of policy and practice to keep  
26 accurate records of Plaintiff's and the class members' rates of pay, by failing to include all  
27 earned non-discretionary bonuses, commissions, and other incentive wages of Plaintiff and class  
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1 members, by failing to keep accurate records of rates of overtime pay, by failing to include all  
2 earned non-discretionary bonuses, commissions, and other incentive pay, net wages earned, daily  
3 or weekly overtime pay, taxes being withheld, Social Security taxes being paid, and by failing to  
4 keep accurate records of the beginning and end of meal periods taken.

5 53. Such a pattern, practice and uniform administration of corporate policy as  
6 described herein is unlawful and creates an entitlement to recovery by the Plaintiff and the class  
7 identified herein, in a civil action, for all damages or penalties pursuant to Labor Code § 226,  
8 including interest thereon, attorney's fees, and costs of suit according to the mandate of  
9 California Labor Code § 226.

10 54. DEFENDANTS' wrongful and illegal conduct in failing to accurately record the  
11 hours worked in accordance with Labor Code § 226 despite the clear legal obligation to do so,  
12 unless and until enjoined and restrained by order of this court, will cause great and irreparable  
13 injury to Plaintiff and all members of the class in that the DEFENDANTS will continue to  
14 violate these California laws, represented by labor statutes, unless specifically ordered to comply  
15 with same. This expectation of future violations will require current and future employees to  
16 repeatedly and continuously seek legal redress in order to gain compensation to which they are  
17 entitled under California law. Plaintiff has no other adequate remedy at law to insure future  
18 compliance with the California labor laws and wage orders alleged to have been violated herein.

19  
20 **FIFTH CAUSE OF ACTION**

21 **FOR VIOLATIONS OF BUSINESS AND PROFESSIONS CODE § 17200 ET SEQ.**

22 **(AGAINST ALL DEFENDANTS BY PLAINTIFF)**

23 55. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 54 as  
24 though fully set for herein.

25 56. DEFENDANTS, and each of them, have engaged and continue to engage in unfair  
26 and unlawful business practices in California by practicing, employing and utilizing the  
27 employment practices outlined above, include, to wit, by failing to (a) pay Plaintiff and the class  
28 all overtime wages owed at the proper rates of overtime pay and (b) pay Plaintiff and the class all

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1 wages owed of meal periods not properly taken and denied.

2 57. DEFENDANTS' utilization of such unfair and unlawful business practices  
3 constitutes unfair, unlawful competition and provides an unfair advantage over DEFENDANTS'  
4 competitors.

5 58. Plaintiff seeks, on her own behalf, on behalf of other members of the class  
6 similarly situated, full restitution of monies, as necessary and according to proof, to restore any  
7 and all monies withheld, acquired and/or converted by the DEFENDANTS by means of the  
8 unfair practices complained of herein.

9 59. Plaintiff seeks, on her own behalf, on behalf of other members of the class  
10 similarly situated, an injunction to prohibit DEFENDANTS from continuing to engage in the  
11 unfair business practices complained of herein.

12 60. Plaintiff is informed and believes and on that basis alleges that at all times herein  
13 mentioned DEFENDANTS have engaged in unlawful, deceptive and unfair business practices,  
14 as proscribed by California Business and Professions Code § 17200 et seq., including those set  
15 forth herein above thereby depriving Plaintiff and other members of the class the minimum  
16 working condition standards and conditions due to them under the California laws and Industrial  
17 Welfare Commission wage orders as specifically described therein.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiff SHAMEIKA MOODY prays for judgment for herself and all others  
20 on whose behalf this suit is brought against DEFENDANTS, jointly and severally, as follows:

- 21
- 22 1. For an order certifying the proposed class;
  - 23 2. For an order appointing Plaintiff as the representative of the class;
  - 24 3. For an order appointing Counsel for Plaintiff as class counsel;
  - 25 4. Upon the First Cause of Action, for wages and consequential damages according to  
26 proof, and for waiting time penalties according to proof pursuant to California Labor  
27 Code § 203;
  - 28 5. Upon the Second Cause of Action, for waiting time penalties according to proof pursuant

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- 1 to California Labor Code § 203;
- 2 6. Upon the Third Cause of Action, for wages owed for meal periods and for waiting time
- 3 penalties according to proof pursuant to California Labor Code § 203;
- 4 7. Upon the Fourth Cause of Action, for damages or penalties pursuant to statute as set forth
- 5 in California Labor Code § 226, and for costs and attorney's fees;
- 6 8. Upon the Fifth Cause of Action, for restitution to Plaintiff and other similarly effected
- 7 members of the general public of all funds unlawfully acquired by Defendants by means
- 8 of any acts or practices declared by this Court to be in violation of Business and
- 9 Professions Code § 17200 et seq., for an injunction to prohibit Defendants to engage in
- 10 the unfair business practices complained of herein, for an injunction requiring
- 11 Defendants to give notice to persons to whom restitution is owing of the means by
- 12 which to file for restitution;
- 13 9. On all causes of action for attorneys fees and costs as provided by California Labor Code
- 14 §§ 226 & 1194 and Code of Civil Procedure § 1021.5 and for such other and further relief
- 15 the Court may deem just and proper.
- 16

Dated: October 11, 2007

LAW OFFICES OF PETER M. HART

By: Peter M. Hart, Esq.  
Attorney for Plaintiff

## DEMAND FOR JURY TRIAL

23 Plaintiff, for herself and the class, hereby demands a jury trial as provided by

24 California law.

DATED: October 11, 2007

LAW OFFICES OF PETER M. HART

By: Peter M. Hart  
Attorney for Plaintiff



800' d TVLOL

CASE NUMBER: CGC-07-468057 SHAMEIKA MOODY VS. CHARMING SHOPPES OF DELAW

**NOTICE TO PLAINTIFF**

A Case Management Conference is set for

**DATE: MAR-14-2008**

**TIME: 9:00AM**

**PLACE: Department 212  
400 McAllister Street  
San Francisco, CA 94102-3680**

All parties must appear and comply with Local Rule 3.

CRC 3.725 requires the filing and service of a case management statement form CM-110 no later than 15 days before the case management conference.

However, it would facilitate the issuance of a case management order **without an appearance** at the case management conference if the case management statement is filed, served and lodged in Department 212 twenty-five (25) days before the case management

Plaintiff must serve a copy of this notice upon each party to this action with the summons and complaint. Proof of service subsequently filed with this court shall so state.

**ALTERNATIVE DISPUTE RESOLUTION POLICY REQUIREMENTS**

IT IS THE POLICY OF THE SUPERIOR COURT THAT EVERY CIVIL CASE PARTICIPATE IN EITHER MEDIATION, JUDICIAL OR NON-JUDICIAL ARBITRATION, THE EARLY SETTLEMENT PROGRAM OR SOME SUITABLE FORM OF ALTERNATIVE DISPUTE RESOLUTION PRIOR TO A MANDATORY SETTLEMENT CONFERENCE OR TRIAL.  
(SEE LOCAL RULE 4)

Plaintiff must serve a copy of the Alternative Dispute Resolution Information Package on each defendant along with the complaint. All counsel must discuss ADR with clients and opposing counsel and provide clients with a copy of the Alternative Dispute Resolution Information Package prior to filing the Case Management Statement.

**[DEFENDANTS: Attending the Case Management Conference does not take the place of filing a written response to the complaint. You must file a written response with the court within the time limit required by law. See Summons.]**

Superior Court Alternative Dispute Resolution Coordinator  
400 McAllister Street, Room 103  
San Francisco, CA 94102  
(415) 551-3876

See Local Rules 3.6, 6.0 C and 10 D re stipulation to commissioners acting as temporary judges

**PROOF OF SERVICE**

I, the undersigned, declare:

I am over the age of eighteen (18) years, and not a party to the within action. I am employed by Morgan, Lewis & Bockius, LLP and my business address is One Market, Spear Street Tower, San Francisco, CA 94105.

On December 3, 2007, I served the following document(s):

**NOTICE TO PLAINTIFF AND TO THE SUPERIOR COURT OF  
REMOVAL OF ACTION TO FEDERAL DISTRICT COURT**

on the parties involved addressed as follows:

Peter M. Hart, Esq.  
Law Offices of Peter M Hart  
13952 Bora Bora Way, F-320  
Marina Del Ray, CA 90292

Attorneys for Plaintiff

Telephone: (310) 478-5789  
Facsimile: (509) 561-6411  
Email: hartpeter@msh.com

Kenneth H Yoon, Esq.  
1 Wilshire Boulevard, Suite 2200  
Los Angeles, CA 90017

Attorneys for Plaintiff

Telephone: (213) 612-0988  
Facsimile: (213) 947-1211  
Email: kyoona@yoonlaw.com

Larry W. Lee, Esq.  
Diversity Law Group  
444 South Flower Street, Suite 1370  
The Citigroup Building  
Los Angeles, CA 90071

Attorneys for Plaintiff

Telephone: (213) 488-6555  
Facsimile: (213) 488-6554  
Email: lwlee@diversitylaw.com

**BY PERSONAL DELIVERY:** The within document(s) were served by hand in an envelope addressed to the addressee(s) above on this date. The Proof of Service by the process server will be filed within five (5) days.

**BY MAIL:** I am readily familiar with my employer's practice for collection and processing of documents for mailing with the United States Postal Service and that practice is that the documents are deposited with the United States Postal Service with postage fully prepaid the same day as the day of collection in the ordinary course of business. On this date, I served the above interested parties following my employer's ordinary business practices.



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| | **BY FACSIMILE:** By use of a facsimile machine telephone number 415/442-1001, I served a copy of the within document(s) on the above interested parties at the facsimile numbers listed above. The transmission was reported as complete and without error. The transmission report, which is attached to this proof of service, was properly issued by the transmitting facsimile machine.

| | **BY FEDERAL EXPRESS OVERNIGHT DELIVERY:** I caused each envelope, with delivery fees provided for, to be deposited in a box regularly maintained by Federal Express. I am readily familiar with the practice for collection and processing of documents for delivery by overnight service by Federal Express of Morgan, Lewis & Bockius, LLP, and that practice is that the document(s) are deposited with a regularly maintained Federal Express facility in an envelope or package designated by Federal Express fully prepaid the same day as the day of collection in the ordinary course of business.

| | **BY EMAIL:** By transmitting via electronic mail the document(s) listed above to the email address(s) set forth below on this date (pursuant to a stipulation between the parties).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at San Francisco, California on December 3, 2007.

  
Deborah Stein